

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. EMra05120617
EEOC NO. 24FA600075

EDDIE GOVAIN-LATIMER,
Complainant,

FILE DATED

JAN 25 2008

vs.

Indiana State Civil Rights Commission

RIDGELAWN FUNERAL HOME,
Respondent.

FINDINGS OF FACT, CONCLUSIONS, OF LAW, AND ORDER

On September 27, 2007, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision"). On October 15, 2007, Complainant, Eddie Govain-Latimer ("Latimer"), filed her Objections To Administrative Law Judge's Proposed Findings Of Fact[, Conclusions Of Law,] And Order. On November 21, 2007, Latimer filed Claimant's (*sic*) Brief In Support Of Objections To Administrative Law Judge's Proposed Findings Of Fact[, Conclusions Of Law,] And Order. On November 30, 2007, Respondent Ridgelawn Funeral Home (:Ridgelawn") filed Respondent's Reply Brief In Opposition To Objections To Administrative Law Judge's Proposed Findings Of Fact[, Conclusions Of Law,] And Order.

David C. Carter, Vice-Chairperson of the ICRC, presided over oral argument on Latimer's Objections on December 14, 2007. Other Commissioners present were Barry Baynard, John E. Garcia, and Steven A. Ramos. Commissioners absent were Alpha Blackburn (the Chairperson), Tehiji G. Crenshaw, and Charles D. Gidney. Latimer was present and was represented by counsel, Hilbert L. Bradley, Esq. of Gary. Ridgelawn was represented by counsel, Keith Wolak, Esq. of the Munster firm of PINKERTON AND FRIEDMAN PC. Also present on behalf of Ridgelawn was Robert Williams ("Williams"),

President and Chief Executive Officer. Arguments of counsel were heard, questions were asked of Latimer and Williams by members of the ICRC, and the cause was taken under advisement.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC finds and rules as follows.

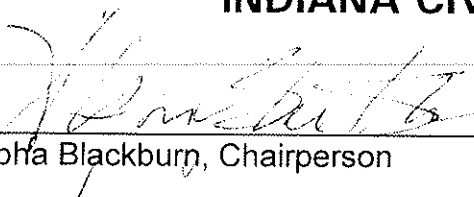
1. Complainant has not met the burden of an objecting party to demonstrate an error that affected the result.

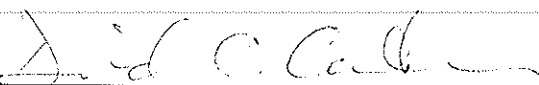
IT IS, THEREFORE, ORDERED

1. Complainant's Objections To Administrative Law Judge's Proposed Findings Of Fact[, Conclusions Of Law,] And Order are **OVERRULED**.

2. The ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

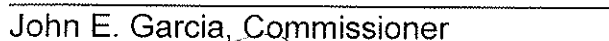
INDIANA CIVIL RIGHTS COMMISSION

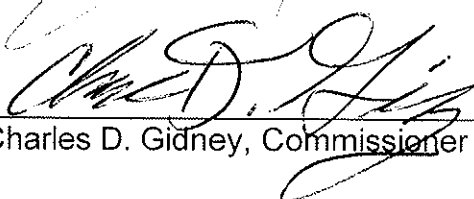

Alpha Blackburn, Chairperson

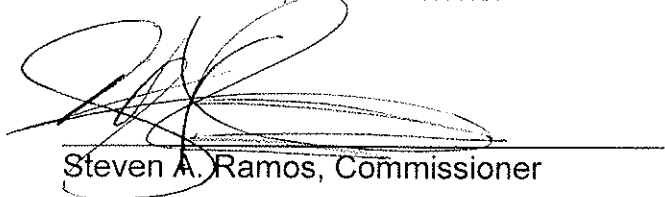

David C. Carter, Vice-Chairperson


Barry Baynard, Commissioner


Tehiji G. Crenshaw, Commissioner


John E. Garcia, Commissioner


Charles D. Gidney, Commissioner


Steven A. Ramos, Commissioner

Dated: 25 January 2008

To be served by first class mail on the following parties and attorneys of record:

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EDDIE GOVAIN-LATIMER,
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SEP 27 2007

RIDGELAWN FUNERAL HOME,
Respondent.

Indiana State Civil Rights Commission

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

A Hearing was held before the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on April 10 and 11, 2007 in Crown Point, Indiana. Complainant, Eddie Govain-Latimer ("Complainant", "Govain", or "Latimer"), was present and was represented by counsel, Hilbert L. Bradley, Esq. of the LAW OFFICES OF HILBERT L. BRADLEY of Gary. Respondent, Ridgelawn Funeral Home ("Ridgelawn"), was represented by counsel, Keith Wolak of the Munster firm of PINKERTON AND FRIEDMAN PC. Also present on behalf of Ridgelawn was Robert Williams, Sr., ("Williams"), President.

Opening statements were waived by both parties. Witnesses, other than Latimer and Williams, were sequestered and instructed not to discuss the case or their testimony until the Hearing was over. Latimer called the following witnesses: Brett R. Moreland ("Moreland"), William Latimer ("William"), and herself. During the presentation of Latimer's case, Complainant's Exhibit 4 ("CX-"), CX1, CX2, and CX3 were admitted into evidence without objection; CX5, CX6, CX7, and Respondent's Exhibit A ("RX_") were admitted into evidence over objection; and RXB was offered, but not admitted into evidence. Also during the presentation of Latimer's case, Stipulated Exhibits I ("SX_") through SXXII, inclusive, were admitted.

After Latimer rested her case, Ridgelawn called Linda Hanson ("Hanson"), Michael Ferguson ("Ferguson"), Beverly Davis ("Davis"), and Williams to testify on its behalf. During the presentation of Ridgelawn's case, CX8 was admitted into evidence without objection and CX9 was offered into evidence but withdrawn. Latimer testified in rebuttal and Ridgelawn elected not to present any evidence in surrebuttal. Both parties waived closing arguments. The ALJ took the cause under advisement and ordered the parties to file what they suggested that the ALJ enter as proposed findings of fact, conclusions of law, and order on or before May 25, 2007 and that briefs could be filed by the same date. This deadline was extended once, to June 15, 2007.

On May 14, 2007, Latimer filed Complainant's Tendered [Suggested Proposed] Findings Of Fact And Conclusions Of Law [And Order]. On June 15, 2007, Ridgelawn filed Respondent's [Suggested] Proposed Findings Of Fact And Conclusions Of Law [And Order].

Having carefully considered the evidence and the arguments of counsel, and being duly advised in the premises, the ALJ proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The issues to be resolved are (a) whether Latimer was subjected to disparate treatment because of race with respect to payment or promotion by Ridgelawn, and, (b) if so, what relief should be awarded. SECOND PRE-HEARING ORDER ¶3 (March 29, 2007).
2. Latimer is an adult African-American female who has, at all material times, resided in the state of Indiana.
3. Ridgelawn is a funeral home located in Gary, Indiana that has, at all material times, employed 6 or more persons within the state for wages or salary.

4. Williams hired Latimer as a funeral director at Ridgelawn, where she commenced employment on July 2, 2004. SXII. At this time, Latimer had a little over 6 years of experience as a licensed funeral director. Her pay was \$20.00 per hour for funeral services, \$135.00 for each embalming, \$50.00 for the removal of remains to the funeral home, and a 10% commission for the sale of pre-need contracts through an affiliated company – Calumet Pre-Need Company, Inc.
5. At a time very close to the hiring of Latimer, Robert Acevez (“Acevez”), a Hispanic male, was hired to serve as manager and a funeral director. Acevez’s duties did not include selling pre-need contracts. Acevez was paid a weekly salary of \$860.00.
6. On November 10, 2004, when Latimer was the only funeral director at Ridgelawn, a grave opening at the Abraham Lincoln Cemetery was not “called in” by Latimer for the Jonny M. Williams funeral. As a result, the burial had to be delayed and Ridgelawn provided the family with a free burial site as a result of this error.
7. Approximately two weeks later, Ridgelawn hired Jeffrey Sachs (“Sachs”) as a funeral director at a salary of \$900.00 per week. Sachs also did embalming..
8. At the time of Sachs’ hiring, Williams was already having “concerns” about Latimer’s work.
9. On or about March 1 of 2005, Latimer was switched from an hourly employee to a commission employee. .
10. Williams had been told that Latimer “was doing her shopping and running around on our time”.
11. Latimer acknowledged that Williams expressed displeasure of the length of time she attended at certain services while being paid \$20.00 an hour.
12. The reason that Williams put Latimer on commission was to attempt to stabilize the payroll.
13. At the time that Latimer was put on a commission basis, Ridgelawn’s business losses were mounting. In the years 2003, 2004, and 2005, Ridgelawn lost approximately \$25,000, then approximately \$70,000, and then approximately \$133,000, respectively.

14. In August of 2005, Thomas Klopfenstein ("Klopfenstein") was rehired under an employment contract by Williams to be the general manager of the funeral home at a weekly salary of \$1,153.00.

15. Klopfenstein had over 20 years experience in the industry and was the person who had bought all the equipment that was needed to originally outfit Ridgelawn.

16. Hanson, a white female, was hired approximately the second week of August 2005 at a salary of \$575.00 per week.

17. Hanson was hired by Williams upon the recommendation of his grandson who indicated that she had 12 years of experience and was highly qualified.

18. When Hanson began work and Williams discovered that she had inadequate embalming skills and "at need" sales skills, she was terminated after less than two weeks of work.

19. No individual with whom Latimer attempts to compare herself had the same duties and responsibilities as Latimer and, for that reason, the differences in pay do not support a claim that race was a factor in the method or rate at which she was paid.

20. The other argument that Latimer has made is essentially that when Williams changed her pay to a commission basis, he told her he could not afford to pay her at the previous rate, yet he kept hiring people at high rates of pay. This argument is that the change in her pay was not an economic decision as asserted by Ridgelawn and, therefore, must have been based on race. This argument is, on this record, unpersuasive.

A. Williams' testimony that the primary factor considered in determining the rate of pay of new employees was practical experience is unrefuted. The record is consistent with that explanation of the starting salaries of the persons hired.

B. Ridgelawn's performance, in profit and loss terms, was getting worse during Latimer's tenure there.

21. Latimer has not proven by a preponderance of the evidence that the manner or rate at which she was paid by Ridgelawn was established because of race.

22. Latimer's claim about promotion is based upon her testimony, corroborated only by her husband, that, at some point, she approached Williams about becoming the Manager and Williams responded by laughing and saying "You know I have to have a White Manager". Williams denies that Latimer ever asked him about being the Manager.

23. With regard to whether this conversation occurred, Latimer's evidence in support is not more credible than Williams' testimony in denial.

A. Based upon the observation of the demeanor of the 3 witnesses involved – Latimer, William, and Williams – the Latimers do not appear to be more credible than Williams.

B. Williams has employed at least 3 African-American managers at other funeral homes he owns. Additionally, he employed Acevez, who is Hispanic, at Ridgelawn as a manager. Thus, it does not appear that Williams believed that he had to have a White Manager.

24. Latimer has not proven by a preponderance of the evidence that she was denied a promotion to Manager because of race.

25. There is evidence that Williams and Klopfenstein used the word "nigger" on a number of occasions. None of these occasions involved either Latimer's pay or whether she should be promoted to Manager and, for that reason, they are not direct evidence that either of those decisions was made because of race. Latimer has not raised a claim that she was subjected to a hostile environment because of race and that question is, for that reason, not addressed. If the pay or promotion issue were closer, these comments could have affected the outcome.

26. There was also an argument that funeral directors, including Latimer, were selected to serve particular customers based upon being the same race as the deceased. There was also mention that William, who removed bodies, was only assigned to remove bodies of African-Americans. Neither of these arguments is, on this record, persuasive.

A. When confronted with evidence that Latimer had served as director for some decedents who were not African-American, this argument was modified

to reflect that Latimer was only assigned to African- American decedents unless no other director was available for decedents who were not African- American. Since there is no evidence of the purported unavailability of other directors, this argument is unpersuasive.

B. The only person that William can remember making assignments to him was Latimer. There is no evidence that anyone higher in the Ridgelawn hierarchy required or prohibited any assignment to William. As a result, this does not serve as evidence of racial discrimination by Ridgelawn.

27. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

CONCLUSIONS OF LAW.

1. The ICRC has jurisdiction over the subject matter and the parties.
2. Latimer and Ridgelawn are each a "person" as that term is defined in the Indiana Civil Rights Law, IC 22-9-1-1 *et. seq.* ("the ICRL").
3. Ridgelawn is an "employer". IC 22-9-1-3(h).
4. What constitutes an unlawful discriminatory practice is set out in the following subsection of the ICRL:
 - (l) "Discriminatory practice" means:
 - (1) the exclusion of a person from equal opportunities because of race ;
 - ...Every discriminatory practice relating to ... employment ... shall be considered unlawful unless it is specifically exempted by this chapter.
IC 22-9-1-3(l).
5. Cases decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et. seq.* ("Title VII") are entitled to great weight in the interpretation of the ICRL. *Indiana Civil Rights Commission v. Culver Educational Foundation*, 535 N.E.2d 112 (Ind. 1989).

6. A complainant may prevail by demonstrating that a prohibited consideration was a motivating factor for an adverse decision, regardless of whether other legitimate factors also motivated the adverse decision. *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003).

7. Latimer has not proven by a preponderance of the evidence that Ridgelawn's decisions on the method or amount of her pay were motivated, in whole or in part, by race.

8. Latimer has not proven by a preponderance of the evidence that Ridgelawn's failure to promote her was motivated, in whole or in part, by race.

9. Alternatively, a complainant may prevail through the 3 stage burden shifting process set out in *McDonnell Douglas Corp. V. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 688 (1973). See *ICRC v. City of Muncie*, 459 N.E.2d at 418.". *Weatherbee v. Southwestern Jefferson County Consolidated Schools Corporation*, 665 N.E.2nd 945, 951 (1996 Ind. App.). The Indiana courts have stated that "[i]nitially, the complaining party has the burden of establishing a prima facie case of discrimination ...". *Indiana Department of Corrections v ICRC*, 486 N.E.2d 612, 617 (1985 Ind. App.). In order to establish a *prima facie* case the complainant must show:

- (1) that she belongs to a protected minority;
- (2) that she applied and was qualified for the position for which the employer was seeking applicants;
- (3) that, despite her qualifications, she was rejected; and
- (4) that after her rejection, the employer hired someone of complainant's qualifications. *Id.*

10. With respect to Latimer's promotion, she has failed to prove by a preponderance of the evidence that she applied for a promotion and, therefore, has failed to make a prima facie case.

11. With respect to Latimer's pay claim, analyzed under *McDonnell-Douglas*, she has failed to prove that anyone with similar experience, duties, and responsibilities was paid by a different method or at a different rate and, therefore, has failed to make a prima facie case.

12. Ridgelawn did not commit an unlawful discriminatory practice against Latimer.

13. If the ICRC finds that a person has not committed an unlawful discriminatory practice, it must dismiss the complaint as against said person. IC 22-9-1-6(m).

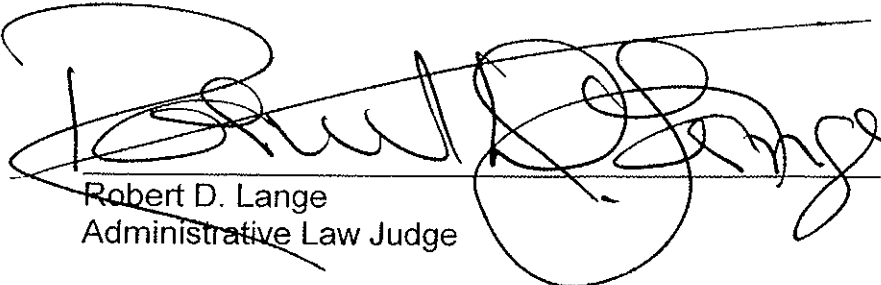
13. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

14. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

ORDER

1. Latimer's complaint is **DISMISSED**, with prejudice.

Dated: 27 September 2007



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 27th day of September, 2007 on the following parties and attorneys of record:

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PINKERTON AND FRIEDMAN PC
BY: Keith Wolak, Esq.
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and to be personally served this 27th day of September, 2007 on the following:

Indiana Civil Rights Commission
c/o The Honorable Gregory Kellam Scott, Esq.; Director
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Indianapolis, IN 46204-2255